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OFFICE OF GENERAL
COUNSEL: Jan Wildt Baran

September 1, 2009

BY HAND

Ms. Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6206 (BASF)

Dear Ms. Duncan:

Wiley Rein LLP represents BASF Corporation ("BASF") in the above-captioned Matter Under Review ("MUR"). This letter responds to the July 2, 2009, Complaint filed with the Federal Election Commission ("FEC" or "Commission") by William H. Schmelling on behalf of the United Steelworkers ("USW"). The Complaint alleges that BASF has refused or failed to make available a payroll deduction program to facilitate contributions to the United Steelworkers Political Action Fund.

The Complaint is incorrect. BASF has diligently worked with USW personnel to establish a payroll deduction program at BASF's Geismar, Louisiana facility. BASF is conducting this work expeditiously, but must depend on its third party payroll administrator to provide cost information associated with operating the payroll deduction program. BASF conveyed initial cost information to the USW on June 29, 2009. BASF supplemented this information on August 26, 2009.

The Complaint appears to be based entirely on the fact that BASF did not provide this cost information as quickly as the USW demanded. For the reasons set forth below, the Complaint is both premature and baseless. The Commission should find that there is no reason to believe that BASF violated the Federal Election Campaign Act of 1971, as amended ("Act"), and should dismiss this matter.

FACTS

BASF administers a separate segregated fund ("SSF") called the BASF Corporation Employees Political Action Committee. BASF collects contributions to its SSF by payroll deduction. Mr. E.J. Billedeaux, the Employee Relations Manager of BASF's Geismar facility, has worked with various USW representatives to implement a payroll deduction program to facilitate contributions to the USW's SSF, the United Steelworkers Political Action Fund.

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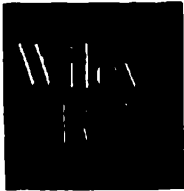
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In June, 2009, Mr. Billedeaux was working directly with Mr. Schmelling and Mr. Dexter Guidry, the USW's Local 620 Unit Chairman, to implement the payroll deduction program. Mr. Schmelling summarized the status of their work in a June 9, 2009, letter to Mr. Billedeaux that is attached as Exhibit B of the Complaint. The letter confirmed that BASF acknowledged its legal obligation to make a payroll deduction program available to permit USW members to contribute to the USW's SSF. The letter further confirmed that both BASF and the USW agreed that the USW would have to pay BASF for the costs associated with establishing and administering the program. However, BASF had been unable at that time to provide the appropriate cost information because it had to be obtained from BASF's third party payroll administrator, Fidelity. Fidelity had not yet calculated and provided the cost information to BASF. The letter concluded that the cost information was anticipated by June 20.

On June 29, 2009, three days before the date of the Complaint, Mr. Billedeaux received an email from a BASF colleague, Ms. Ivory Harris, that included what he understood to be the payroll deduction cost information. A copy of the email is appended hereto as Attachment A. The email stated that the "cost is \$9750.00 to set this up," the "annual cost for these services is \$9,750," and that Mr. Billedeaux was "free to communicate this to the union." Mr. Billedeaux immediately printed the email and walked it down the hall to the office of Mr. Guidry who is Mr. Billedeaux's main point of contact with the USW. Mr. Guidry accepted the information.

Mr. Billedeaux subsequently learned that the initial set up fee for the payroll deduction program may actually be \$16,000, not \$9,750 as suggested in Ms. Harris's June 29 email. Upon further investigation, Mr. Billedeaux confirmed that the one-time set up fee would be \$16,000 and that the annual cost to operate the payroll deduction program would remain \$9,750. Mr. Billedeaux memorialized this information in a letter that he hand delivered to Mr. Guidry on August 26, 2009. A copy of the letter is appended hereto as Attachment B. To ensure that all relevant USW personnel received this information, Mr. Billedeaux also sent copies of the letter to Mr. Schmelling and to another USW representative, Mr. John Link, by certified mail. A copy of the return receipt accompanying Mr. Schmelling's letter is appended hereto as Attachment C.¹

¹ It is unclear whether Mr. Guidry communicated the June 29 cost information to Mr. Schmelling.



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On August 27, 2009, Mr. Guidry responded to Mr. Billedeaux's letter by email. A copy of the email is appended hereto as Attachment D. The email requested a breakdown of the \$16,000 and \$9,750 payroll deduction costs. BASF anticipates that it will be able to provide that information to Mr. Guidry soon.

THE ACT, REGULATIONS, AND FEC ADVISORY OPINIONS AND ENFORCEMENT

The Act states:

Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

2 U.S.C. § 441b(b)(6). The relevant portion of the regulation that implements this statutory provision continues by stating:

If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, check-off system, or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative personnel, the corporation shall, upon written request of the labor organization, make that method available to members of the labor organization working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to

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reimburse the corporation for the actual expenses incurred thereby.

11 C.F.R. § 114.5(k)(1). Expounding on the last sentence of this regulatory provision, the Commission has explicitly warned "that payment by a corporation of costs incident to maintaining a payroll deduction system for facilitating the making of voluntary contributions by employee-union members to a union's separate segregated fund would be prohibited by 441b." FEC Advisory Op. 1979-21.

DISCUSSION

At no point has BASF indicated that it would not provide a payroll deduction program to the USW. As the Complaint itself confirms, BASF has expressly acknowledged its obligation under the Act to provide such a program. However, BASF is also required to develop accurate cost information to ensure that it does not subsidize or overcharge for the USW's payroll deduction program in violation of the Act. See FEC Advisory Op. 1979-21. BASF's efforts to protect both itself and the USW in this regard required time for BASF to collect the appropriate cost information from its third party payroll administrator. The passage of this time appears to be the sole basis for the Complaint's sweeping allegation that "BASF continues to refuse or fails to make [a payroll deduction program] available to the USW."

The Act does not set forth a period of time within which a payroll deduction program must be implemented. The mere passage of time is neither a refusal nor a failure to act. BASF's on-going efforts to assist the USW with the development of a payroll deduction program are clearly documented above and in the Complaint. The time needed by BASF's third party payroll administrator to calculate costs cannot be rightly characterized as a refusal or failure by BASF to provide a payroll deduction program in violation of the Act. In fact, had the time not been taken, BASF risked providing inaccurate cost information which itself could have resulted in a violation of the Act.

Nonetheless, BASF has provided the cost information to the USW and the USW and BASF continue to work on implementing the payroll deduction program.

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CONCLUSION

BASF has diligently worked with the USW to establish a payroll deduction program and has never taken any action to suggest that it would not comply with its legal obligation to do so. Accordingly, the Commission should find no reason to believe that BASF violated the Act and this matter should be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Witold Baran", written over a horizontal line.

Jan Witold Baran
Caleb P. Burns

Attachments

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